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2 Edgar C. Smith, Esq.
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4 Christopher Alan James Swift, Esq.
5 Nevada Bar No. 11291
6 7785 W. Sahara Avenue, Suite 200
7 Las Vegas, Nevada 89117
8 (702) 666-0632; Fax: (702) 946-1345
9 cswift@wrightlegal.net
10 *Attorneys for Ocwen Loan Servicing, LLC*

11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF NEVADA**

13 IN RE:

Case No.: 13-50461-BTB

14 CHRISTOPHER MICHAEL MARINO, and
15 VALERIE MARGARET MARINO,

Chapter 7

16 Debtors

**OPPOSITION TO MOTION FOR
ORDER TO COMPEL PAYMENT OF
ATTORNEY FEES**

17
18
19 COMES NOW, secured creditor OCWEN LOAN SERVICING, LLC ("Ocwen") and
20 hereby opposes Debtors CHRISTOPHER MICHAEL MARINO and VALERIE MARGARET
21 (collectively "Debtors") MARINO Motion for Order to Compel Payment of Attorney Fees.

22 /././

23 /././

24 /././

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26 /././

27 /././

1 This Opposition is based on the pleadings and papers on file with this Court, any facts
 2 subject to judicial notice, any argument this Court might consider, and any evidence this Court
 3 might entertain.

4 Dated: January 6, 2017

WRIGHT, FINLAY & ZAK, LLP

5 /s/ Christopher A.J. Swift, Esq.

6 Edgar C. Smith, Esq.

Nevada Bar No. 5506

7 Christopher Alan James Swift, Esq.

8 Nevada Bar No. 11291

7785 W. Sahara Avenue, Suite 200

9 Las Vegas, Nevada 89117

(702) 666-0632; Fax: (702) 946-1345

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11 *Attorneys for Ocwen Loan Servicing, LLC*

12 **I. INTRODUCTION**

13 Debtors' Motion conveniently omits key facts: (1) that beginning on November 7, 2016,
 14 Ocwen requested that Debtors' counsel provide a W-9 to issue payment; (2) that Debtors'
 15 counsel refused to provide one on the day that payment was due, November 28, 2016; (3) Ocwen
 16 and its counsel worked diligently to remit payment to Debtors' counsel without a W-9 after
 17 learning about this refusal; and (4) payment was made to Debtors' counsel, in its entirety, on
 18 December 15, 2016. Had Debtors' counsel told Ocwen that he refused to provide a W-9 on
 19 November 7, 2016, instead of ignoring emails no less than three times, the instant Motion would
 20 not be necessary. Furthermore, payment has been made and counsel was advised that payment
 21 was forthcoming, negating any need for the instant Motion.

22 **II. FACTUAL STATEMENT**

23 Debtors' Motion is an unnecessary attempt to extort additional fees from Ocwen.
 24 Beginning on November 7, 2016, counsel for Ocwen requested a W-9 to issue payment. (See
 25 **Exhibit 1**, attached hereto). On November 8, 2016, Ocwen's counsel, having received no
 26 response, again requested a W-9 to issue payment. (See **Exhibit 2**, attached hereto). Ocwen's
 27 counsel received no response to this email. On November 17, 2016, Ocwen's counsel again
 28

1 followed up with another email, but still was ignored. (See **Exhibit 3**, attached hereto). On
 2 November 28, 2016, the day payment was due, counsel for creditor again requested a W-9. (See
 3 **Exhibit 4** attached hereto). In the afternoon, Debtors' counsel finally responded and indicated
 4 he would not provide a W-9. (See **Exhibit 5** attached hereto). Ocwen was forced to take
 5 additional procedural steps to deliver payment to Debtors' counsel due to this untimely refusal.
 6 (See Declaration of Christopher A.J. Swift, Esq., attached hereto). These additional steps
 7 included receiving authorization from Ocwen's various departments and the issuing of the check
 8 to Ocwen's counsel's office. The check was issued on December 9, 2016, and received by
 9 Ocwen's counsel on December 12, 2016, due to the intervening weekend. (See copy of check,
 10 attached hereto as **Exhibit 6**). On December 12, 2016, Ocwen's counsel called Debtors' counsel
 11 and left a message indicating that the check was on its way to his office. (See Declaration of
 12 Christopher A.J. Swift, Esq., attached hereto). Ocwen's counsel, located in Las Vegas, Nevada,
 13 sent the check to Nationwide Legal, LLC for deliver on December 13, 2016, to Debtors'
 14 counsel's office in Reno, Nevada. (See copy of delivery order, attached hereto as **Exhibit 7**).
 15 Despite being told that the check was on its way, Debtors' counsel filed the instant Motion for
 16 Order to Compel Payment of Attorney Fees on December 14, 2016, now requesting \$5,000.00.
 17 The check was delivered to Debtors' counsel on December 15, 2016, in the amount of
 18 \$34,955.50. (See Receipt of Check, attached hereto as **Exhibit 8**).

20 **II. LEGAL STANDARD**

21 The standard for finding a party in civil contempt is well settled:

22 The moving part has the burden of showing by clear and convincing evidence that
 23 the contemnors violated a specific and definite order of the court. The burden
 24 then shifts to the contemnors to demonstrate why they were unable to comply.

25 Stone v. City and County of San Francisco, 968 F. 2d 850, 856 n. 9 (9th Cir. 1992). A party's
 26 inability to comply with a judicial order constitutes a defense to a charge of civil contempt.
 27 United States v. Rylander, 460 U.S. 752, 757 (1983). Failure to comply consists of not taking
 28 "all the reasonable steps within [one's] power to insure compliance with the order[.]".

1 Sekaquaptewa v. MacDonald, 544 F.2d 396, 406 (9th Cir. 1976).

2 **III. LEGAL ARGUMENT**

3 In the instant matter, Debtors' counsel refused to respond to Ocwen's counsel's multiple
4 requests for a W-9 until the actual day the payment for attorney fees was due. When Debtors'
5 counsel finally responded and advised that, due to his LLM in taxation, he would refuse to
6 provide a W-9, Ocwen had to proceed with additional steps to provide payment. Had Debtors'
7 counsel informed Ocwen on November 7, 2016, that he would not be providing a W-9, Ocwen
8 still could have made payment prior to the November 28, 2016, deadline. This Court cannot
9 reasonably find that Ocwen did not take all reasonable steps to try and comply with the Order.
10 At no point in time Ocwen ever indicate that it did not intend to make payment. Indeed, when
11 Ocwen's counsel was informed that Debtors' counsel would not provide a W-9, Debtors' counsel
12 was informed that "Ocwen is not refusing to pay, we are just looking into reporting requirements
13 and whether Ocwen can submit payment to you without a W-9. Ocwen fully intends to pay."
14 Thereafter, Ocwen expeditiously worked to submit payment without the W-9, having to
15 coordinate with different departments and obtain certain authorizations to break with its
16 procedure. On December 12, 2016, Ocwen's counsel Debtors' counsel payment was
17 forthcoming, under the impression that this assurance would stave off Debtors' continued threats
18 to move to compel payment. Instead, it appears as though the assurance acted as a reminder to
19 Debtors' counsel, who thereafter prepared and filed the instant Motion, likely motivated by the
20 prospect of additional attorney fees at the high rate of \$500.00 this Court permitted previously.

21 Ocwen's actions do not warrant the additional payment of damages as requested by the
22 Debtors. Indeed, the Debtors are to blame for the delayed payment, as they failed to respond to
23 no less than three (3) emails prior to the due date of November 28, 2017. When Ocwen
24 discovered this refusal, it immediately began to work toward payment of the award without the
25 W-9, which added even additional time to complying with the Court's Order. During this time,
26 Debtors' counsel was repeatedly told that Ocwen intended to pay the entire amount of the award
27 for attorney fees. Payment, in its entirety, has been made at this time and specifically on
28

1 December 15, 2016.

2 **V. CONCLUSION**

3 For the aforementioned reasons, Ocwen respectfully requests that this Court deny the
4 Motion for Order to Compel Payment of Attorney Fees.

5 Dated: January 6, 2017

WRIGHT, FINLAY & ZAK, LLP

6 /s/ Christopher A.J. Swift, Esq.

7 Edgar C. Smith, Esq.

Nevada Bar No. 5506

8 Christopher Alan James Swift, Esq.

9 Nevada Bar No. 11291

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11 cswift@wrightlegal.net

12 *Attorneys for Ocwen Loan Servicing, LLC*

CERTIFICATE OF SERVICE

1.
2. On January 6, 2017, I served the following document(s):

3. **OPPOSITION TO MOTION FOR ORDER TO COMPEL PAYMENT OF**
4. **ATTORNEY FEES**

5. 2. I served the above-named document(s) by the following means to the
6. persons as listed below:

(Check all that apply)

7. ■ a. ECF System (You must attach the "Notice of Electronic Filing", or list all persons and
8. address and attach additional paper if necessary)

9. SETH J. ADAMS on behalf of Creditor DEUTSCHE BANK NATIONAL
10. TRUST COMPANY, AS TRUSTEE FOR GMACM MORTGAGE LOAN
11. TRUST

sadams@woodburnandwedge.com, NVBK@mccarthyholthus.com

12. CHRISTOPHER PATRICK BURKE on behalf of Debtor CHRISTOPHER
13. MICHAEL MARINO

attycburke@charter.net

14. CHRISTOPHER PATRICK BURKE on behalf of Joint Debtor VALERIE
15. MARGARET MARINO

attycburke@charter.net

16. W. DONALD GIESEKE

wdg@renotrustee.com, dgieseke@ecf.epiqsystems.com

18. U.S. TRUSTEE - RN - 7

USTPRegion17.RE.ECF@usdoj.gov

20. ■ b. United States mail, postage fully pre-paid (List persons and addresses. Attach
21. additional paper if necessary)

22. CHRISTOPHER MICHAEL MARINO

23. POB 565

VERDI, NV 89439

24. VALERIE MARGARET MARINO

25. POB 565

26. VERDI, NV 89439

☐ c. Personal Service (List persons and addresses. Attach additional paper if necessary)

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. By direct email (as opposed to through the ECF System) (List persons and email addresses. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ e. By fax transmission (List persons and fax numbers. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. By messenger (List persons and addresses. Attached additional paper if necessary)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to the Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on Friday, January 06, 2017.

/s/ Faith Harris

An employee of Wright, Finlay & Zak, LLP

1 WRIGHT, FINLAY & ZAK, LLP
2 Edgar C. Smith, Esq.
3 Nevada Bar No. 5506
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13 IN RE:

Case No.: 13-50461-BTB

14 CHRISTOPHER MICHAEL MARINO, and
15 VALERIE MARGARET MARINO,

Chapter 7

16 Debtors

**DECLARATION IN SUPPORT OF
OPPOSITION TO MOTION FOR
ORDER TO COMPEL PAYMENT OF
ATTORNEY FEES**

17
18
19 I, Christopher A.J. Swift, Esq., declare under penalty of perjury of the laws of the State of
20 Nevada as follows:

21 1. I am an attorney of law duly admitted to practice in the State of Nevada and the
22 United States Bankruptcy Court for the District of Nevada.

23 2. I am an associate attorney with the law firm Wright, Finlay & Zak, LLP, and
24 counsel for Defendant Ocwen Loan Servicing, LLC ("Ocwen") in this matter.

25 3. I have personal knowledge of the facts and circumstances set forth in this
26 declaration as specified herein and I am competent to testify regarding the below-stated facts if I
27 am called upon to testify in Court.
28

1 4. I make this Declaration in support of the Opposition to Motion for Order to
2 Compel Payment of Attorney Fees.

3 5. On November 7, 2016, I emailed Christopher Burke, Esq. requesting a W-9 to
4 issue payment to Mr. Burke for the court ordered attorney fees. A true and correct copy of the
5 email is attached as **Exhibit 1**. I did not receive a response.

6 6. On November 8, 2016, I emailed Mr. Burke and again requested a W-9. A true
7 and correct copy of the email is attached as **Exhibit 2**. I did not receive a response.

8 7. On November 17, 2016, I was in the hospital for family medical reasons. I asked
9 my assistant to email Mr. Burke again and request a W-9. A true and correct copy of the email is
10 attached as **Exhibit 3**. There was no response.

11 8. On November 28, 2016, I sent another email asking for a W-9. A true and correct
12 copy of the email is attached as **Exhibit 4**.

13 9. On November 28, 2016, Mr. Burke responded and refused to provide the W-9. A
14 true and correct copy of the email is attached as **Exhibit 5**.

15 10. I have practiced law for ten (10) years and have never encountered an attorney
16 who refused to provide a W-9.

17 11. Due to the refusal, Ocwen and our law firm were forced to take additional
18 procedural steps to make payment.

19 12. At no point in time did Ocwen ever refuse to make payment to Mr. Burke.

20 13. I called Mr. Burke on December 12, 2016, and left a message indicating that
21 payment was on its way.

22 14. The remaining exhibits to the Opposition, **Exhibits 6,7, and 8** are true and correct
23 copies of the originals.

24 ///

25 ///

26 ///

27 ///

28 ///

1 15. I declare under penalty of perjury under the laws of the State of Nevada that the
2 foregoing is true and correct.

3 Dated: January 6, 2017

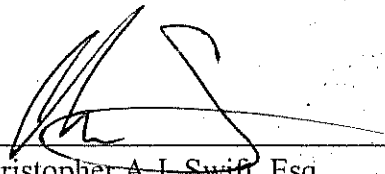
4 
5 _____
6 Christopher A.J. Swift, Esq.

Exhibit 1

Exhibit 1

Exhibit 1

Christopher Alan James Swift

From: Christopher Alan James Swift
Sent: Monday, November 07, 2016 9:17 AM
To: 'attycburke@charter.net'
Cc: Faith K. Harris
Subject: RE: Marino - Attorney Fee Order

Hi Kimberly,

Can you please send me a W-9 so I can get Ocwen to issue the check for the attorney fee/cost award?

Thanks,

Christopher A.J. Swift
Attorney
Licensed in California and Nevada



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From: attycburke@charter.net [mailto:attycburke@charter.net]
Sent: Wednesday, November 02, 2016 5:25 PM
To: Christopher Alan James Swift
Subject: Marino - Attorney Fee Order

Good Evening Mr. Swift,

Please find the attached Order Granting Amended Motion for Attorney Fees and Costs for the above-referenced case. At your earliest convenience, please review the Order, and if agreeable, please sign and send it back so we may upload it with the Court.

Thank you,

Kimberly Wilson, assistant to:

Christopher P. Burke, Esq.

Exhibit 2

Exhibit 2

Exhibit 2

Christopher Alan James Swift

From: Christopher Alan James Swift
Sent: Tuesday, November 08, 2016 4:00 PM
To: 'attycburke@charter.net'
Cc: Faith K. Harris; Edgar C. Smith
Subject: RE: Marino - Attorney Fee Order

Hi Chris,

Please provide me with a W-9 for the attorney fee payment. Also, would you object to a continuance on my client's Opening Brief, currently due November 14, 2016? I need to know in case I need to file a motion for an extension of time this week.

Thanks,

Christopher A.J. Swift
Attorney
Licensed in California and Nevada



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Christopher P. Burke, Esq.

Exhibit 3

Exhibit 3

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Christopher Alan James Swift

From: Faith K. Harris
Sent: Thursday, November 17, 2016 11:14 AM
To: 'attycburke@charter.net'
Cc: Edgar C. Smith; Christopher Alan James Swift
Subject: RE: Marino - Attorney Fee Order

Good morning,

Following up on the below request for your w-9.

Faith Harris
Legal Assistant



WRIGHT FINLAY & ZAK
ATTORNEYS AT LAW

7785 W. Sahara Ave., Suite 200
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Attorney
Licensed in California and Nevada



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Thank you,

Kimberly Wilson, assistant to:

Christopher P. Burke, Esq.

Exhibit 4

Exhibit 4

Exhibit 4

Christopher Alan James Swift

From: Christopher Alan James Swift
Sent: Monday, November 28, 2016 10:18 AM
To: Faith K. Harris; 'attycburke@charter.net'
Cc: Edgar C. Smith
Subject: RE: Marino - Attorney Fee Order

Hi Christopher,

This will be my office's third request for a W-9 so that Ocwen can pay the attorney fees. Per the Court Order, the deadline for payment is today. Since we have not received a W-9 at this time, Ocwen cannot make payment. Will you please submit as soon as possible?

Christopher A.J. Swift
Attorney
Licensed in California and Nevada



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From: attycburke@charter.net [mailto:attycburke@charter.net]
Sent: Wednesday, November 02, 2016 5:25 PM
To: Christopher Alan James Swift
Subject: Marino - Attorney Fee Order

Good Evening Mr. Swift,

Please find the attached Order Granting Amended Motion for Attorney Fees and Costs for the above-referenced case. At your earliest convenience, please review the Order, and if agreeable, please sign and send it back so we may upload it with the Court.

Thank you,

Kimberly Wilson, assistant to:

Christopher P. Burke, Esq.

Exhibit 5

Exhibit 5

Exhibit 5

Christopher Alan James Swift

From: attycburke@charter.net
Sent: Monday, November 28, 2016 2:30 PM
To: Christopher Alan James Swift
Subject: Marino BK-N-13-50461-BTB

Dear Mr. Swift,

As you are aware, there was a hearing on this motion and Judge Beesley made a ruling. However, the Court's Order did not require the submission of a W-9 prior to payment, nor should it, as one is not required. I have a LLM in Taxation, and would be happy to review any statute, regulation, or private letter ruling contrary to that.

Therefore, please provide confirmation that a check will be sent by tomorrow, so no further motions have to be filed regarding payment pursuant to the Court's Order.

Sincerely,

Christopher P. Burke, Esq.

Exhibit 6

Exhibit 6

Exhibit 6

OCWEN LOAN SERVICING, LLCA/P DISBURSEMENT ACCOUNT
1661 WORTHINGTON ROAD
WEST PALM BEACH, FL 3340988-88/113
JP Morgan Chase Bank N.A.
712 MAIN AT, RUSK
HOUSTON, TX 77002**NO. 1677788**VENDOR
24249DATE
12/09/2016AMOUNT
\$ 34,955.90*****PAY** *** Thirty Four Thousand Nine Hundred Fifty Five and 90/100***TO
THE
ORDER
OF**Christopher P. Burke, Esq.**
702 Plumas Street
RENO, NV 89509VOID AFTER 180 DAYS
APPLY PAYMENT PER THE ATTACHED REMITTANCE ADVICE*Anthony M. Doyle*

SIGNATURE HAS A COLORED BACKGROUND • BORDER CONTAINS MICROPRINTING

⑈001677788⑈ ⑆111300880⑆ ⑆06300068684⑈

OCWEN LOAN SERVICING, LLCCHECK DATE: 12/09/2016
VENDOR: 24249**No.: 1677788**

INVOICE	GROSS	DISCOUNT	AMOUNT PAID
12/1/2016 601363107/STLMNT 702 Plumas Street	34,955.90	0.00	34,955.90

*Marino, Christopher**Chris Swyft*

* TOTALS ... | 34,955.90 | 0.00 | 34,955.90 |

DETACH AND RETAIN THIS STATEMENT

Exhibit 7

Exhibit 7

Exhibit 7

NATIONWIDE LEGAL

LLC

MESSENGER INSTRUCTIONS

PHONE (702) 385-5444

FAX (702) 385-1444



NV51618

010 - STANDARD DELIVERY - 4 HRS

FIRM NAME & ADDRESS:

CUST #: 210007

WRIGHT FINLAY & ZAK - LITIGATION

7785 W. Sahara Avenue, Suite 200

Las Vegas NV, 89117

PHONE #: (702) 475-7964

FAX #:

CONTACT: Faith Harris EMAIL: fharris@wrighlegal.net

BILLING / FILE #: MARINO 614-2015586

DATE GENERATED #: 12/13/2016

CASE NAME #: VS

CASE #: 13-50461-btb

RECEIVED
DEC 13 2016
BY: _____

010 - STANDARD DELIVERY - 4 HRS

DUE DATE #: 12/13/2016

SPECIAL INSTRUCTIONS:

PLEASE DELIVER CHECK #1677788 TO BURKE, HAVE BURKE
SIGN RECEIPT OF CHECK ATTACHED AND RETURN
EXECUTED RECEIPT OF CHECK TO WFZ

PICKUP FROM:

Pickup Date/Time: 12/13/2016 7:42 PM

WRIGHT FINLAY & ZAK - LITIGATION

Faith Harris

7785 W. Sahara Avenue, Suite 200

Las Vegas, NV 89117

(702) 475-7964

Pickup Instructions:

DELIVER TO:

Delivery Date/Time: 12/13/2016

CHRISTOPHER P. BURKE, ESQ.

702 Plumas Street

Reno, NV 89509

Delivery Instructions:

☒ COMPLETED

SIGNATURE

PRINTED NAME / TIME

Kim Wilson
Personal legal assist

10:04am

40's 165

Brown Female

12/15/16

Cauc
5'-8"

Order#: NV51618/WORKM

Exhibit 8

Exhibit 8

Exhibit 8

1 WRIGHT, FINLAY & ZAK, LLP
2 Edgar C. Smith, Esq.
3 Nevada Bar No. 5506
4 Christopher Alan James Swift, Esq.
5 Nevada Bar No. 11291
6 7785 W. Sahara Avenue, Suite 200
7 Las Vegas, Nevada 89117
8 (702) 666-0632; Fax: (702) 946-1345
9 cswift@wrightlegal.net
10 Attorneys for Ocwen Loan Servicing, LLC

11 UNITED STATES BANKRUPTCY COURT
12 DISTRICT OF NEVADA

13 IN RE:

Case No.: 13-50461-BTB
Chapter 7

14 CHRISTOPHER MICHAEL MARINO, and
15 VALERIE MARGARET MARINO,

RECEIPT OF CHECK

16 Debtors

17 RECEIPT OF A CHECK of the above regarding Order Granting Amended Motion for
18 Attorney Fees and Costs in the amount of \$34,955.50 check number 1677788, is hereby
19 acknowledged this 15 day of December, 2016.

20 Therese A. Nelson, assistant to:
21 CHRISTOPHER P. BURKE, ESQ.
22 702 Plumas Street
23 Reno, Nevada 89509
24 Telephone: (775) 333-9277
25 Attorney for Debtor(s)
26
27
28